(2)

FILED
JUN 17 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 97-1850

In The

Supreme Court of the United States

October Term, 1997

DAVID DEES, D/B/A DAVID DEES ILLUSTRATION,

Petitioner,

v.

SABAN ENTERTAINMENT, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ANTHONY M. KEATS, ESQ.
*LARRY W. MCFARLAND, ESQ.
DAVID K. CAPLAN, ESQ.
BAKER & HOSTETLER LLP
9150 Wilshire Boulevard, Suite 205
Beverly Hills, California
90212-3411
Telephone (310) 385-7500

Attorneys for Respondent Saban Entertainment, Inc.

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

32 pp

I. QUESTION PRESENTED

Where a copyright assignor admits that a particular work was created on behalf of the assignee and the assignor executed a written agreement wherein he "transferred and assigned" all "copyrights and renewals and extensions thereof" for all works rendered on behalf of the assignee, does this writing satisfy the requirement of 17 U.S.C. § 204(a) that transfers of copyright ownership be via "an instrument of conveyance, or a note or memorandum of the transfer"?

II. RULE 29.6 LISTING

Saban Entertainment, Inc.'s parent company is Fox Family Worldwide, Inc. The nonwholly owned subsidiaries of Saban Entertainment, Inc., are (1) Creativite et Developpement, (2) Fox Kids Worldwide LLC, (3) Saban Entertainment Italy SRL, (4) Saban International Paris SarL, and (5) TV-10, B.V.

III. TABLE OF CONTENTS

I. QUESTION PRESENTED i

II. RULE 29.6 LISTING ii

III. TABLE OF CONTENTS iii

IV. TABLE OF AUTHORITIES iv

V. OPINIONS BELOW 1

VI. STATEMENT OF THE CASE 1

VII. REASONS FOR DENYING THE WRIT 3

A. Introduction 3

B. The Issue Regarding "Subsequent Ratification" Was Not Addressed By The Ninth Circuit And Is Not At Issue In This Case 5

C. There Is No Conflict Regarding Specificity In Copyright Transfer Agreements And 17 U.S.C. § 204(a) Does Not Require Specific Words To Give Effect To A Copyright Transfer 9

VIII. CONCLUSION 12

IV. TABLE OF AUTHORITIES

Page

CASES

Arthur Rutenberg Homes, Inc. v. Drew Homes, Inc., 29 F.3d 1529 (11th Cir. 1994) 7, 8

Eden Toys, Inc. v. Florelee Undergarment Co., Inc., 697 F.2d 27 (2nd Cir. 1982) 6, 7, 8

Effects Assocs., Inc. v. Cohen, 908 F.2d 555 (9th Cir. 1990), *cert. denied*, 498 U.S. 1103 (1991) 3

Graver Tank & Mfg. Co., Inc. v. Linde Air Products, 336 U.S. 271 (1949) 10

Imperial Residential Design, Inc. v. Palms Dev. Group, Inc., 70 F.3d 96 (11th Cir. 1995) 7, 8

Konigsberg Int'l Inc. v. Rice, 16 F.3d 355 (9th Cir. 1994) 8

Magnuson v. Video Yesteryear, 85 F.3d 1424 (9th Cir. 1996) 8

Playboy Enters., Inc. v. Dumas, 53 F.3d 549 (2nd Cir. 1995) 9, 10, 11

Saxon v. Blann, 968 F.2d 676 (8th Cir. 1992) 9

Schiller & Schmidt, Inc. v. Nordisco Corp., 969 F.2d 410 (7th Cir. 1992) 9, 10, 11

STATUTES

17 U.S.C. § 204(a) (1998) ..... *passim*

V. OPINIONS BELOW

In addition to the opinions included in the Petition, the District Court also issued a Statement of Uncontroverted Facts and Conclusions of Law which is included in the appendix hereto ("Opp. App.") at A-1.

VI. STATEMENT OF THE CASE[1]

In November 1992, Saban Entertainment, Inc. ("Saban") contacted David Dees ("Dees") for the purposes of hiring Dees to design and illustrate a logo (hereinafter, the "Logo") for use with Saban's Mighty Morphin Power Rangers' television program. CR 23 at 2-3, ER 120-21; CR 27 at 2, ER 170.

Dees performed work in the design and illustration of the Logo in November 1992. CR 23 at 3, ER 121; CR 27 at 2, ER 170.

On March 16, 1993, Dees and Saban executed a written agreement entitled "Work-For-Hire/Independent Contractor Agreement" (hereinafter the "March 16 Agreement") wherein Dees acknowledged that Dees:

> [H]as rendered and/or will render services for and on behalf of [Saban] in connection with one or more projects, and that any and all of such services and the results and proceeds thereof, including without limitation, all material of whatever kind or nature (all such material, services, and the results and proceeds thereof being

---

[1] The District Court's records are hereinafter referred to as "CR" and the 9th Circuit's Excerpts of Record are hereinafter referred to as "ER."

> referred collectively herein as the "Material"), rendered by [Dees] hereunder were and/or will be created by Dees as a "work-made-for-hire" specially ordered or commissioned by [Saban] for use as part of a audiovisual work, as a contribution to a collective work or as a supplementary work; with [Saban being deemed] the sole author of the Material and the sole and exclusive owner, throughout the [universe and in perpetuity], of all rights of every kind and nature, whether now known or hereafter devised (including, without limitation, copyrights and all renewals and extensions thereof) in and to the Material, including, without limitation, the right to make such changes and uses of the Material as it may from time to time determine.

CR 23 at 3-4, ER 121-22; CR 17 at 7, ER at 110.

In the same March 16 Agreement, Dees agreed that "[t]o the extent, if at all, the Material may be determined not to be a 'work-made-for-hire', all of the above referenced rights in it shall be deemed transferred and assigned to [Saban] by this agreement." CR 17 at 7, ER 110. Dees admits that on "[a]pproximately March 1993 Saban asked me to sign a document which I later realized was a work for hire agreement wherein I agreed to transfer copyright ownership of all work created by me for Saban to Saban." CR 22 ¶ 6, ER 144.

On October 6, 1995, Dees filed his Complaint in the Central District of California against Saban. CR 1, ER 1. In his Complaint, Dees alleges claims for copyright infringement, as well as certain supplemental claims (which Dees has apparently abandoned in his Petition.) CR 1, ER 1.

After filing its answer, Saban filed a Motion for Summary Judgment or in the Alternative Summary Adjudication of Issues. CR 16, ER 77. A hearing on Saban's motion for summary judgment was held on June 3, 1996, and on June 5, 1996, the Court entered its Statement of Uncontroverted Facts and Conclusions of Law and its Order granting Saban summary judgment. App. at A-5; Opp. App. at A-1. The Ninth Circuit Court of Appeals affirmed the District Court's decision, holding that the March 16 Agreement "transferred [Dees'] copyright in the Mighty Morphin Power Rangers' logo with as much specificity as the law requires. *See Effects Assocs., Inc. v. Cohen*, 908 F.2d 555, 557 (9th Cir. 1990), *cert. denied*, 498 U.S. 1103 (1991)." App. at A-2.

VII. REASONS FOR DENYING THE WRIT

A. Introduction

In his Petition, Dees goes to great lengths to avoid addressing the relevant law and facts of the case before this Court. Instead, Dees discusses retroactive transfers and whether copyright assignments must specifically identify that copyright rights are being assigned, neither of which are at issue in this case. The simple fact is that Mr. Dees executed a written agreement wherein he assigned any and all works that he did on behalf of Saban, including the Logo, to Saban and this was the basis for the Ninth Circuit's affirmation of the District Court's decision.

Dees' Petition makes two very important misstatements regarding the effect of the March 16 Agreement when he

states that the Agreement "purported to retroactively transfer Dees' copyrights to Saban in unspecified 'Material.'" Dees' Petition at 5.

First, neither Saban, nor the District Court, nor the Ninth Circuit, relied on a retroactive transfer. Rather, as Saban argued before both the District Court and the Ninth Circuit, and as was clear from all the papers and arguments submitted to each of these Courts, the transfer of the copyright in the Logo was effective on March 16, 1993, the date of the Agreement. Saban has not attempted to argue that the March 16 Agreement confirmed a prior agreement or understanding. Contrary to Dees' assertion, the Ninth Circuit did not address "subsequent ratification" pursuant to 17 U.S.C. § 204(a). Dees states that "[T]he Ninth Circuit approved of the application of the 'subsequent ratification' exception to 17 U.S.C. § 204(a) against Dees. . . . In doing so, the Ninth Circuit reiterated its willingness to extend the subsequent ratification exception further than the Second, Sixth, Seventh and Eighth Circuits." Petition at 5-6. Notably absent from this summary of the Ninth Circuit's decision was any citation to any language in the Ninth Circuit's opinion. In fact, the Ninth Circuit held that "[T]he disputed agreement transferred plaintiff's copyright in the Mighty Morphin Power Rangers' logo with as much specificity as the law requires." App. at A-2.

Second, Dees argues that the March 16 Agreement did not specify the material being transferred to Saban. In fact, the March 16 Agreement did specify the Material: "all of such services [rendered by Dees on behalf of Saban] and the results and proceeds thereof, including without limitation, all material of whatever kind or nature (all such material, services, and the results and

proceeds thereof being referred collectively herein as the "Material")." CR 23 at 3-4, ER 121-22; CR 17 at 7, ER at 110. And there can be no question that the Logo falls within the term "Material" because Dees has consistently admitted since the filing of his Complaint that he created the Logo for and on behalf of Saban. It is beyond dispute that in the March 16 Agreement Dees transferred to Saban his copyright rights in the work he rendered on behalf of Saban.

This Court should deny Dees' Petition because this is a simple case of contract interpretation which was correctly decided by the United States District Court and the Ninth Circuit Court of Appeals, and presents no issues which justify this Court's review.

B. The Issue Regarding "Subsequent Ratification" Was Not Addressed By The Ninth Circuit And Is Not At Issue In This Case.

In his Petition, at 6-13, Dees discusses the law in various circuits regarding the validity of a written "subsequent ratification" of an earlier oral agreement under the Copyright Act's statute of frauds provision, 17 U.S.C. § 204(a). This discussion is entirely irrelevant to the case before this Court. In the March 16 Agreement, Dees and Saban agree that "[t]o the extent, if at all, [the product of Dees' work for Saban] may be determined not to be a 'work-made-for-hire,' all of the above referenced rights in it shall be deemed transferred and assigned to [Saban] by this agreement." CR 17 at 7, ER 110. According to the Agreement, those "above referenced rights" include "copyrights and all renewals and extensions thereof." CR

17 at 7, ER 110. In his Petition, Dees states that the Ninth Circuit held that the March 16 Agreement memorialized a prior transfer. This is not the case. Presented with the March 16 Agreement, the Ninth Circuit held that this Agreement was sufficient, in and of itself, to transfer copyright ownership to Saban. The transfer was effective on March 16, 1993, not on the date of any earlier oral agreement.

Dees' misstatement of the lower courts' decisions is troubling in light of the fact that all of Saban's memoranda and briefs filed in the District Court and in the Ninth Circuit addressed the copyright assignment issue and never did Saban advance the argument that the March 16 Agreement was effective at any time other than the date on which it was signed. Indeed, Saban distinguished "subsequent ratification" cases in both its reply in support of its summary judgment motion and in its brief before the Ninth Circuit. Neither the District Court nor the Ninth Circuit addressed "subsequent ratification." Because of Dees' misrepresentation of the issues before this Court, Saban once again must distinguish subsequent ratification cases from the relevant law which is applicable to this case.

The first case relied on by Dees in his petition is *Eden Toys, Inc. v. Florelee Undergarment Co., Inc.*, 697 F.2d 27 (2nd Cir. 1982). In *Eden*, the plaintiff, Eden, claimed that the defendant's acts which occurred in 1979, infringed Eden's copyright rights. The defendant argued that because there was no written exclusive license, as required by 17 U.S.C. § 204(a), "Eden was not the exclusive licensee . . . at the time the allegedly infringing garments were sold in 1979." *Eden*, 697 F.2d at 36. Thus, the defendant argued that Eden

did not have standing to bring the action. Eden argued that a 1980 written amendment between the copyright owner and Eden confirmed a 1975 oral understanding that Eden was the exclusive licensee. *Id.* As Dees notes, the Second Circuit held that this later amendment was effective to confer rights to Eden which were effective at the time of the 1975 oral understanding. *Id.* Thus, Eden was the exclusive licensee in 1979 when the allegedly infringing garments were sold.

Dees also relies on *Arthur Rutenberg Homes, Inc. v. Drew Homes, Inc.*, 29 F.3d 1529 (11th Cir. 1994) in support of its Petition. In *Arthur*, the Court noted that "[T]he dispositive issue in this case is whether Chrysalis was the owner of the 'Verandah II' copyright at the time of the original registration in 1988 so that the registration had legal effect." *Id.* at 1532. The Court noted that:

> Resolution of this issue requires that we inquire when Chrysalis obtained ownership of the copyright in the 'Verandah II' plans. Was ownership transferred in 1988 upon the execution of the 'Verandah II' plans pursuant to the agreement between Chrysalis and Heise to create the plans with the express understanding and agreement that Chrysalis would own the copyright? Or did Chrysalis obtain ownership only in early 1990, well after the initial registration of the copyright, when Heise executed a written memorandum of this agreement, as required by 17 U.S.C. § 204(a)?

Id.

As additional support, Dees cites the Eleventh Circuit's decision in *Imperial Residential Design, Inc. v. Palms Dev. Group, Inc.*, 70 F.3d 96 (11th Cir. 1995), which also

addressed the issue of when the copyright transferee's rights vested. *Id.* at 97 (Defendant argued that although the later writing was an effective transfer of copyright, it did not transfer the right to sue for infringements that occurred before the writing).

Dees next cites *Konigsberg Int'l Inc. v. Rice*, 16 F.3d 355 (9th Cir. 1994) for its holding that "[T]he writing in question must, at the very least, be executed more or less contemporaneously with the agreement." *Id.* at 357. The question in *Konigsberg*, as in *Eden*, *Arthur*, and *Imperial*, was whether a later writing can be used to validate an earlier oral agreement and whether the agreement would be effective at the time the oral agreement was made. *Konigsberg*, at 357. This issue was again reached by the Ninth Circuit in *Magnuson v. Video Yesteryear*, 85 F.3d 1424 (9th Cir. 1996), where the Court addressed whether a writing signed in 1993 could act as the writing required by the 1909 Copyright Act's precursor to 17 U.S.C. § 204(a), in order to give effect to a 1966 oral agreement to confirm a transfer *effective before 1979*. *Magnuson*, 85 F.3d at 1426-28.

In each of the cases cited by Dees, the courts were faced with the issue of whether the writing provided the copyright transferee with the basis to assert copyright ownership which would be effective at the time of an earlier oral agreement. In these cases, the copyright transferee was attempting to assert copyright rights between the date of the oral agreement and the date of the written agreement. Because of this, each of these cases, and each of the cases cited by Dees in support of its argument regarding "subsequent ratification" are entirely irrelevant to Dees' claims against Saban. Neither Saban, nor the

District Court, nor the Ninth Circuit, relied on any earlier oral understanding or agreement. This is not the case to address "subsequent ratification." The issue in this case is whether the March 16 Agreement, in and of itself, transferred Dees' copyright to Saban on March 16, 1993.[2] The plain language of the March 16 Agreement shows that it is a written memorandum of the transfer of Dees' copyrights. 17 U.S.C. § 204(a).

C. There Is No Conflict Regarding Specificity In Copyright Transfer Agreements And 17 U.S.C. § 204(a) Does Not Require Specific Words To Give Effect To A Copyright Transfer.

As a second basis for review, Dees urges this Court to adopt a uniform rule of interpretation of section 204(a) because there is conflict between the Circuits regarding the specificity requirements for the writing required by 17 U.S.C. § 204(a). Dees compares *Playboy Enters., Inc. v. Dumas*, 53 F.3d 549 (2nd Cir. 1995) to *Schiller & Schmidt, Inc. v. Nordisco Corp.*, 969 F.2d 410, 413 (7th Cir. 1992) and *Saxon v. Blann*, 968 F.2d 676, 678 (8th Cir. 1992) for the proposition that there is conflict regarding whether the word "copyright" must appear in a section 204(a) writing. As with Dees' argument regarding "subsequent ratification," whether the word "copyright" must be included in written copyright transfers is irrelevant to this case. The March 16 Agreement specifically mentions "copyrights and all renewals and extensions thereof." Moreover, Dees

---

[2] It is undisputed that Saban did not use the Mighty Morphin Power Rangers' Logo prior to March 16, 1993, and Dees has asserted no claim for copyright infringement occurring before the March 16 Agreement.

misstates the holdings of these cases in order to create a conflict. The issue involved in each of these cases was not the specificity requirements of section 204(a). Rather, the issue was the interpretation of the agreements in question: was the copyright transferred? As the Court in *Schiller* noted: "It is true that the Copyright Act requires that assignments be in writing, but we have the writing. . . . ; the issue is its interpretation." *Schiller*, 969 F.2d at 413 (citations omitted); *see also Playboy*, 53 F.3d at 564. In the case at hand, both the District Court and the Ninth Circuit found that based on the uncontroverted facts, the only interpretation of the March 16 Agreement is that Dees transferred the copyright in the Logo to Saban. This Court should not grant certiorari to address a Petitioner-created conflict between the circuit courts regarding issues which are not even involved in this case. The only purpose a further review of this case would serve is to add a third opportunity to interpret the March 16 Agreement. This is directly at odds with the Supreme Court's role and practice: "A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co., Inc. v. Linde Air Products*, 336 U.S. 271 (1949). Dees has shown nothing to suggest that the lower courts were in error in their interpretation of the March 16 Agreement based on the facts before them.

Without any support in the Copyright Act or case law interpreting the Act, Dees requests this Court to

adopt a rule "that requires, at a minimum, that the writing in question specifically identify the work being transferred." Petition at 16-17.[3] In his Petition, Dees omitted the fact that he has admitted that the March 16 Agreement applied to the Logo. Dees admits that on "[a]pproximately March 1993 Saban asked me to sign a document which I later realized was a work for hire agreement wherein I agreed to transfer copyright ownership of all work created by me for Saban to Saban." CR 22 ¶ 6, ER 144.[4]

Moreover, Dees' argument is beside the point: the March 16 Agreement is specific. In the agreement, Dees agreed that "all of the above referenced rights[5] in [the

---

[3] This argument is at direct odds with his admission in his reply to Saban's brief before the Ninth Circuit where Dees states: "In fact, Dees does not deny that the agreement is enforceable for works created after the writing was signed." Dees' Reply To Appellee's Brief at 5.

[4] Dees takes issue with the specificity of the March 16 Agreement, but does not describe what language would be sufficient to "specifically identify" the work at issue. According to Dees, the Supreme Court should invent some unspecified language to ensure that copyright owners do not inadvertently transfer their copyrights. Dees points to nothing to support any Supreme Court mandate regarding the specific wording of copyright transfers. And rightfully so. The Copyright Act requires transfers to be in writing. 17 U.S.C. § 204(a). What actually constitutes a "transfer," however, is a question of fact and contract interpretation. *Schiller*, 969 F.2d at 413; *Playboy*, 53 F.3d at 564.

[5] These rights were: "all rights of every kind and nature, whether now known or hereafter devised (including, without limitation, copyrights and all renewals and extensions thereof)." CR 17 at 7, ER at 110.

Material] shall be deemed transferred and assigned to [Saban] by this agreement." CR 17 at 7, ER 110. Dees acknowledges that among the "Material" is the work he performed in the design and illustration of the Logo in November 1992. CR 23 at 3, ER 121; CR 27 at 2, ER 170. As both the District Court and the Ninth Circuit held, the March 16 Agreement clearly satisfies the requirements of 17 U.S.C. § 204(a).

VIII. CONCLUSION

For the foregoing reasons the petition for certiorari should be denied.

Respectfully submitted,

ANTHONY M. KEATS
*LARRY W. MCFARLAND
DAVID K. CAPLAN
BAKER & HOSTETLER LLP
9150 Wilshire Boulevard
Suite 205
Beverly Hills, CA 90212-3411
(310) 385-7500

Counsel for Saban Entertainment, Inc.

**Counsel of Record*

ANTHONY M. KEATS (State Bar No. 123672)
LARRY W. MCFARLAND (State Bar No. 129668)
DAVID K. CAPLAN (State Bar No. 181174)
BAKER & HOSTETLER
600 Wilshire Boulevard
Los Angeles, California 90017
(213) 624-2400

Attorneys for Defendant and Counterclaim Plaintiff SABAN ENTERTAINMENT, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DAVID DEES d/b/a DAVID DEES ILLUSTRATION, Plaintiff, v. SABAN ENTERTAINMENT, Defendants.	Civil Action No.: 95-6740-R STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW (Central District Local Rule 7.14.1]
SABAN ENTERTAINMENT, INC., Counterclaim Plaintiff, v. DAVID DEES d/b/a DAVID DEES ILLUSTRATION, Counterclaim Defendant.	Date: June 3, 1996 Time: 10:00 A.M. Place: Ctrm. of the Hon. Manuel L. Real (Filed Jun. 3, 1996)

After consideration of the papers in support of and in opposition to defendant's motion for summary judgment and the oral argument of counsel, the Court determines that the following facts have been established as,

UNCONTROVERTED FACTS[1]

1. Plaintiff and Counterclaim Defendant David Dees d/b/a David Dees Illustration (hereinafter referred to as "Dees") is a resident of California, Complaint ¶ 1, and Defendant and Counterclaim Plaintiff Saban Entertainment, Inc. (hereinafter referred to as "Saban") is a Delaware corporation with a principal place of business in California. First Amended Answer ¶ 46.

2. In November, 1992, Saban contacted Dees for the purposes of hiring Dees as an independent contractor to illustrate a logo for use with Saban's Mighty Morphin Power Rangers television program. Complaint ¶ 5.

3. Dees' performed work in the illustration of the Logo in November 1992. Complaint, ¶ 12.

4. On or about March 16, 1993, Dees and Saban executed a written agreement entitled "Work-For-Hire/ Independent Contractor Agreement" (hereinafter the "March 16 Agreement") wherein Dees acknowledged that all of his work on behalf of Saban was done as work-made-for-hire. Saban's First Request for Admissions

---

[1] For the purposes of its Motion for Summary Judgment or in the alternative Summary Adjudication of Issues only, Saban does not contest the material facts from Dees' Complaint listed as Uncontroverted Facts numbers 1 through and including 3 below.

attached to the Declaration of Larry W. McFarland ("McFarland Decl.") as Exhibit **A**; Dees' Response to Saban's First Request for Admissions attached to the McFarland Decl. as Exhibit **B**. In that agreement, Dees acknowledges that Dees

> has rendered and/or will render services for and on behalf of [Saban] in connection with one or more projects, and that any and all of such services and the results and proceeds thereof, including without limitation, all material of whatever kind or nature (all such material, services, and the results and proceeds thereof being referred collectively herein as the "Material"), rendered by [Dees] hereunder were and/or will be created by Dees as a "work-made-for-hire" specially ordered or commissioned by [Saban] for use as part of a audiovisual work, as a contribution to a collective work or as a supplementary work; with [Saban being deemed] the sole author of the Material and the sole and exclusive owner, throughout the [universe and in perpetuity], of all rights of every kind and nature, whether now known or hereafter devised (including, without limitation, copyrights and all renewals and extensions thereof) in and to the Material, including, without limitation, the right to make such changes and uses of the Material as it may from time to time determine.

Exhibit "B" to Saban's First Request for Admissions, attached as Exhibit **A** to the McFarland Decl.

5. In the same agreement, Dees agreed that "[t]o the extent, if at all, the Material may be determined not to be a "work-made-for-hire", all of the above referenced rights

in it shall be deemed transferred and assigned to [Saban] by this agreement." Exhibit "B" to Saban's First Request for Admissions, attached as Exhibit **A** to the McFarland Decl.

6. On or about August 26, 1993, Episode #1 of the Mighty Morphin Power Rangers television show, entitled "Day of the Dumpster", was first publicized. Exhibit **C** to the McFarland Decl.

7. This episode, which features the Logo, is the subject of federal copyright registration PA 620 838, effective September 15, 1993. Exhibit **C** to the McFarland Decl.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1338 and 1367.

2. Dees' work performed for Saban on the Mighty Morphin Power Rangers Logo was work-made-for-hire under 17 U.S.C. § 101.

3. To the extent that Dees had any rights in the Mighty Morphin Power Rangers Logo, such rights were transferred and assigned to Saban in the March 16 Agreement.

4. Dees is not the owner of the copyright to the Mighty Morphin Power Rangers Logo.

5. Pursuant to 17 U.S.C. § 501, Dees may not bring a claim for copyright infringement against Saban.

6. Pursuant to 17 U.S.C. § 505, Saban is owed its reasonable attorneys' fees and costs as the prevailing party on Dees' claim for copyright infringement.

7. Dees had failed to support his allegation that the public is likely to be confused or misled as to the origin of the Mighty Morphin Power Rangers Logo and that Saban competed unfairly with Dees.

8. Because Dees has no protectable rights in the Mighty Morphin Power Rangers Logo, he may not bring a claim for dilution or injury to business reputation based on Saban's use of the Logo.

9. Dees' claim for breach of oral contract is barred because of the existence of the later written agreement between Saban and Dees and because of the statute of limitations.

10. Judgment shall be entered in Saban's favor consistent herewith.

Dated: June 3, 1996

/s/ Real
UNITED STATES
DISTRICT JUDGE

Presented By:

ANTHONY M. KEATS
LARRY W. MCFARLAND
DAVID K. CAPLAN
BAKER & HOSTETLER

By: /s/ Larry W. McFarland
LARRY W. MCFARLAND
Attorneys for Defendant and
Counterclaim Plaintiff,
SABAN ENTERTAINMENT, INC.